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KHAIRUDDIN ABU HASSAN v. DATUK SERI HJ AHMAD HAMZAH & ORS AND ANOTHER APPEAL

FEDERAL COURT, PUTRAJAYA
RICHARD MALANJUM CJ
DAVID WONG DAK WAH CJ (SABAH & SARAWAK)
B ALIZATUL KHAIR OSMAN FCJ
ROHANA YUSUF FCJ
TENGKU MAIMUN TUAN MAT FCJ
[CIVIL APPEALS NO: 01(i)-35-10-2018(W) & 01(i)-40-10-2018(W)]
21 AUGUST 2019

C

ELECTION: *Petition – Appointment of advocate – Whether valid – Notice of appointment of advocates for respondents – Whether respondents failed to comply with rr. 9 & 34 of Election Petition Rules 1954 – Whether r. 9 of Election Petition Rules 1954 applied only to petitioner – Respondents filed written notices of their*
D *appointment at Registrar's office – Whether respondents' advocates complied with requirement of r. 34 of Election Petition Rules 1954*

ELECTION: *Petition – Jurisdiction – Courts – Place of filing election petition – Whether election petition ought to be filed in High Court Melaka or Kuala Lumpur – Whether different High Courts in Malaya and in Sabah and Sarawak branches*
E *of respective High Courts – Whether High Court in Malaya encompasses territories of Melaka and Kuala Lumpur – Whether election petition filed in High Court Kuala Lumpur proper – Whether High Court Kuala Lumpur had jurisdiction to determine challenge of election – Federal Constitution, arts. 118 & 121(1)*

F

ELECTION: *Petition – Insufficient particulars – Allegation of – Whether petitioner pleaded facts and grounds of any non-adherence or offences alleged to have been committed – Whether petition properly filed – Whether petition in accordance with rr. 4(1)(b) and 4(4) of Election Petition Rules 1954*

G The petitioner was a Parti Keadilan Rakyat candidate for the Parliamentary Seat in P.139 Jasin, Malacca. He filed an election petition in the High Court at Kuala Lumpur challenging the results of the 14th General Election for the said seat. The first respondent was a Barisan Nasional candidate, the pronounced winner of the seat, while the second respondent was the
H returning officer and the third respondent was the Election Commission. Both the petitioner and the respondents raised preliminary objections in the High Court. The petitioner's preliminary objection was premised on rr. 9 and 34 of the Election Petition Rules ('the EPR 1954'). It was contended by the petitioner that the respondents failed to comply with rr. 9 and 34 in that the notice of appointment of the advocates for the respondents was not stamped
I and that the filing of the notice of appointment of the first respondent's advocates was made through a law firm and not the advocates concerned.

Accordingly, the petitioner argued that the appointment of the respondents' advocates was invalid and the said advocates had no *locus* to represent the respondents. The election judge held that r. 9 of the EPR 1954 was only applicable to the petitioner and not the respondent and consequently dismissed the petitioner's preliminary objection. The respondents' objections, on the other hand, were (i) that there was non-compliance of art. 118 of the Federal Constitution by the petitioner where the petitioner had wrongly filed the election petition in the High Court at Kuala Lumpur when it ought to have been filed in the High Court at Melaka; (ii) that service of the election petition was in breach of r. 15 of the EPR 1954; (iii) that there was non-compliance by the petitioner of rr. 4(1)(b) and 4(4) of the EPR 1954; and (iv) that the filing of the election petition was an afterthought. The election judge held that pursuant to art. 118 of the Federal Constitution, the petitioner must not only comply with the mode of challenging the election by election petition, but must also comply with the provision regarding the place of filing the election petition itself. Hence, the election judge held that the petition must be filed in the High Court at Melaka. The election judge also held that the petition was not in compliance with r. 4(1)(b) of the EPR 1954 which provides that an election petition shall state the holding and results of the election, and shall briefly state the facts and grounds relied on to sustain the prayer. Hence, the election judge dismissed the election petition. Two appeals arose herein: the first appeal, Appeal No. 35, was filed by the petitioner against the decision of the election judge in dismissing his preliminary objection while his second appeal, Appeal No. 40, was filed by the petitioner against the decision of the election judge in upholding the first respondent's preliminary objections. The issues that arose were (i) whether the election judge had misinterpreted art. 118 of the Federal Constitution; (ii) whether the election judge had erred in dismissing the preliminary objection of the petitioner in respect of the confirmation of appointment of the respondents' advocates; and (iii) whether the election judge had erred in holding that the election petition lacked particularisation.

Held (dismissing Appeal No 35; allowing Appeal No. 40)
Per Tengku Maimun Tuan Mat FCJ delivering the judgment of the court:

(1) The word 'High Court' appearing in art. 118 is to be understood in light of art. 121(1) of the Federal Constitution which establishes only two High Courts of co-ordinate jurisdiction *ie* one in Malaya and the other in Sabah and Sarawak. Thus, under the Federal Constitution, there are only two High Courts. The different High Courts in Malaya and in Sabah and Sarawak are but branches of the respective High Courts. Therefore, when art. 118 speaks of 'jurisdiction', it refers to the jurisdiction of the two High Courts as stipulated under art. 121 and not the local or territorial jurisdiction as defined in s. 3 of the Courts of Judicature Act

A 1964. The High Court in Malaya encompasses the territories of Melaka and Kuala Lumpur. Thus, the election petition filed in the High Court at Kuala Lumpur was proper. Since Melaka and Kuala Lumpur are two of the territories comprising the States of Malaya, the High Court at Kuala Lumpur had the jurisdiction to determine the challenge to the B election held in Jasin, Melaka as both the High Court at Kuala Lumpur and the High Court at Melaka are but branches of the High Court in Malaya. (paras 26, 28 & 31)

(2) In interpreting the provisions of a statue, one of the cardinal rules is to adhere as closely as possible to the literal meaning of the words. If the C Legislature had so intended that r. 9 be applicable in similar terms to those other than a petitioner, one would expect such requirement to be clearly spelt out in an express and clear provision to that effect. Such an important requirement could not be inferred from the words employed in r. 9 which clearly by its language applied only to D petitioner(s). Hence, this court was not at liberty to ignore the explicit provisions of r. 9 of the EPR 1954 mandating the stated requirements on petitioner(s) and not respondent(s). Further, r. 34 of the EPR 1954, and not r. 9, was applicable to the respondents. Hence, in so far as the respondents were concerned, r. 34 of the EPR 1954 was sufficient to E govern the appointment of any advocate acting or representing the respondents whereupon, such advocate shall, immediately upon his appointment as such, leave written notice thereof at the office of the Registrar. The respondents' advocates had complied with the requirement of r. 34 of the EPR 1954 as they had filed written notices of their appointment at the Registrar's office of the High Court at Kuala F Lumpur. (paras 38, 40, 42 & 43)

(3) For the petitioner to succeed in his election petition, the petitioner must briefly plead the facts and grounds of any non-adherence or offences alleged to have been committed as enumerated in r. 4(1)(b) of the EPR G 1954. A petition must not only narrate the facts complained of but must also relate or associate the complaints with the provision of election laws alleged to have been transgressed. The petitioner had pleaded, *inter alia*, contraventions or non-compliances which had affected the results of the election. Having perused the petition, this court was satisfied that the petition was in accordance with rr. 4(1)(b) and 4(4) of H the EPR 1954 in that it had stated the holdings and results of the election and had also briefly stated the facts and grounds relied on to sustain the prayer. The election petition was thus properly filed, and the election judge erred in holding that the election petition was not in compliance with the provisions of rr. 4(1) (b) and 4(4) of the EPR 1954. (paras 46, I 49, 51 & 52)

***Bahasa Malaysia** Headnotes*

Pempetisyen adalah calon Parti Keadilan Rakyat untuk Kerusi Parlimen P.139 Jasin, Melaka. Pempetisyen telah memfailkan petisyen pilihan raya di Mahkamah Tinggi Kuala Lumpur mencabar keputusan Pilihan Raya Umum Ke-14 untuk kerusi tersebut. Responden pertama adalah calon Barisan Nasional, pemenang parti kerusi, sementara responden kedua adalah pegawai pilihan raya dan responden ketiga adalah Suruhanjaya Pilihan Raya. Kedua-dua pempetisyen dan responden membangkitkan bantahan awalan di Mahkamah Tinggi. Bantahan awalan pempetisyen berdasarkan kk. 9 dan 34 Kaedah-kaedah Petisyen Pilihan Raya 1954 ('EPR 1954'). Pempetisyen menghujahkan responden-responden gagal mematuhi kk. 9 dan 34 kerana notis pelantikan peguam bela-peguam bela responden tidak disetem dan pemfailan notis pelantikan peguam bela-peguam bela responden pertama dibuat melalui firma peguam dan bukan melalui peguam bela-peguam bela berkenaan. Sewajarnya, pempetisyen membantah bahawa pelantikan peguam bela-peguam bela responden-responden adalah tidak sah dan peguam bela-peguam bela tersebut tidak mempunyai *locus* untuk mewakili responden-responden. Hakim pilihan raya memutuskan k. 9 EPR 1954 hanya diguna pakai terhadap pempetisyen dan bukan responden dan seterusnya menolak bantahan awalan pempetisyen. Bantahan-bantahan responden-responden pula adalah (i) terdapat ketakpatuhan per. 118 Perlembagaan Persekutuan oleh pempetisyen yang telah, dengan salah, memfailkan petisyen pilihan raya di Mahkamah Tinggi Kuala Lumpur apabila ini harus difailkan di Mahkamah Tinggi Melaka; (ii) terdapat ketakpatuhan penyerahan petisyen pilihan raya melanggar k. 15 EPR 1954; (iii) terdapat ketakpatuhan oleh pempetisyen k. 4(1)(b) dan 4(4) EPR 1954; dan (iv) pemfailan petisyen pilihan raya adalah satu fikiran kemudian. Hakim pilihan raya memutuskan menurut per. 118 Perlembagaan Persekutuan, pempetisyen bukan hanya harus mematuhi mod mencabar pilihan raya melalui petisyen pilihan raya, tetapi harus mematuhi peruntukan berkenaan tempat pemfailan petisyen pilihan raya itu. Oleh itu, hakim pilihan raya memutuskan petisyen harus difailkan di Mahkamah Tinggi Melaka. Hakim pilihan raya juga memutuskan petisyen tidak mematuhi k. 4(1)(b) EPR 1954 yang memperuntukkan petisyen pilihan raya harus menyatakan alasan-alasan dan keputusan pilihan raya, dan secara ringkasnya menyatakan fakta-fakta dan alasan-alasan yang disandarkan untuk mengekalkan tuntutan. Oleh itu, hakim pilihan raya menolak petisyen pilihan raya. Dua rayuan timbul: rayuan pertama, Rayuan No 35, difailkan oleh pempetisyen terhadap keputusan hakim pilihan raya menolak bantahan awalannya sementara rayuan kedua, Rayuan No. 40, difailkan oleh pempetisyen terhadap keputusan hakim pilihan raya menyokong bantahan awalan responden pertama. Isu-isu yang timbul adalah (i) sama ada hakim pilihan raya tersalah tafsir per. 118 Perlembagaan Persekutuan; (ii) sama ada hakim pilihan raya terkhilaf apabila menolak bantahan awalan

pempetisyen berkenaan pengesahan pelantikan peguam bela-peguam bela responden-responden; dan (iii) sama ada hakim pilihan raya terkhilaf apabila memutuskan bahawa petisyen pilihan raya tidak cukup butir-butir dan fakta-fakta.

Diputuskan (menolak Rayuan No 35; membenarkan Rayuan No. 40) Oleh Tengku Maimun Tuan Mat HMP menyampaikan penghakiman mahkamah:

(1) Perkataan 'High Court' dalam per. 118 difahami berdasarkan per. 121(1) Perlembagaan Persekutuan yang menyifatkan hanya dua Mahkamah Tinggi yang selaras bidang kuasanya iaitu satu di Malaya dan satu lagi di Sabah dan Sarawak. Oleh itu, bawah Perlembagaan Persekutuan, hanya terdapat dua Mahkamah Tinggi. Mahkamah Tinggi yang berbeza di Malaya dan di Sabah dan Sarawak adalah cawangan-cawangan Mahkamah Tinggi masing-masing. Oleh itu, apabila per. 118 menyatakan 'bidang kuasa', ini merujuk pada bidang kuasa dua Mahkamah Tinggi seperti yang ditentukan bawah per. 121 dan bukan bidang kuasa tempatan atau wilayah seperti yang ditafsirkan dalam s. 3 Akta Mahkamah Kehakiman 1964. Mahkamah Tinggi Malaya merangkumi wilayah-wilayah Melaka dan Kuala Lumpur. Oleh itu, petisyen pilihan raya yang difailkan di Mahkamah Tinggi Kuala Lumpur adalah teratur. Oleh kerana Melaka dan Kuala Lumpur adalah dua wilayah yang terdiri daripada Negeri Tanah Melayu, Mahkamah Tinggi Kuala Lumpur mempunyai bidang kuasa menentukan cabaran-cabaran terhadap pilihan raya di Jasin, Melaka kerana kedua-dua Mahkamah Tinggi Kuala Lumpur dan Mahkamah Tinggi Melaka adalah cawangan-cawangan Mahkamah Tinggi Malaya.

(2) Dalam mentafsirkan peruntukan-peruntukan satu-satu statut, salah satu peraturan utama adalah untuk mematuhi dengan teliti maksud harfiah perkataan-perkataan itu. Jika badan perundangan berniat k. 9 diguna pakai dalam terma-terma yang sama terhadap pihak selain pempetisyen, keperluan itu sudah tentu akan dinyatakan dengan jelas dalam peruntukan. Keperluan yang penting seperti itu tidak boleh disimpulkan dari perkataan-perkataan yang digunakan dalam k. 9 yang dengan jelas melalui bahasanya hanya terpakai pada pempetisyen. Oleh itu, mahkamah ini tidak boleh mengabaikan peruntukan nyata k. 9 EPR 1954 memberi mandat keperluan-keperluan yang dinyatakan atas pempetisyen dan bukan responden. Seterusnya, k. 34 EPR 1954, dan bukan k. 9, diguna pakai terhadap responden-responden. Oleh itu, berkaitan responden-responden, k. 34 EPR 1954 memadai untuk mentadbir pelantikan mana-mana peguam bela bertindak untuk atau mewakili responden-responden, lalu, peguam bela itu akan, sebaik sahaja dilantik, memberikan notis bertulis di pejabat Pendaftar. Peguam

bela-peguam bela responden-responden telah mematuhi keperluan k. 34 EPR 1954 kerana mereka telah memfailkan notis-notis bertulis pelantikan mereka di pejabat Pendaftar di Mahkamah Tinggi Kuala Lumpur.

(3) Pempetisyen harus secara ringkas memplidkan fakta-fakta dan alasan-alasan apa-apa ketakpatuhan atau kesalahan-kesalahan yang didakwa telah dilakukan seperti yang tertera dalam k. 4(1)(b) EPR 1954. Untuk pempetisyen berjaya dalam petisyen pilihan rayanya, petisyen bukan hanya harus menyatakan fakta-fakta aduan tetapi juga harus menghubungkan atau mengaitkan aduan-aduan dengan peruntukan undang-undang pilihan raya yang didakwa telah dilanggar. Pempetisyen telah memplidkan, antara lain, perbuatan menyalahi atau ketidakpatuhan yang telah menjejaskan keputusan pilihan raya. Setelah meneliti petisyen, mahkamah ini berpuas hati bahawa petisyen adalah menurut k. 4(1)(b) dan 4(4) EPR 1954 yang telah menyatakan alasan-alasan dan keputusan pilihan raya dan juga telah dengan ringkasnya menyatakan fakta-fakta dan alasan-alasan yang disandarkan untuk mempertahankan tuntutan. Petisyen pilihan raya dengan itu telah difailkan dengan teratur, dan hakim pilihan raya terkhilaf apabila memutuskan petisyen pilihan raya tidak mematuhi peruntukan-peruntukan k. 4(1)(b) dan 4(4) EPR 1954.

Case(s) referred to:

Affin Credit (M) Sdn Bhd v. Yap Yuen Fui [1984] 1 CLJ 149; [1984] 1 CLJ (Rep) 62 FC ***(refd)***

Bushell v. Hammond And Others [1904] 2 KB 563 ***(refd)***

Chin Choy & Ors v. Collector of Stamp Duties [1978] 1 LNS 26 FC ***(refd)***

Chong Thain Vun v. Watson & Anor And Other Cases [1967] 1 LNS 29 HC ***(refd)***

Dato' Seri Ir Hj Mohammad Nizar Jamaluddin v. Dato' Seri Dr Zambry Abdul Kadir; Attorney General (Intervener) [2010] 2 CLJ 925 FC ***(refd)***

Dayrell Walter Entrie v. Datuk Patinggi Tan Sri Alfred Jabu Numpang [2007] 7 CLJ 11 HC ***(refd)***

Dr Lee Chong Meng v. Returning Officer (Abdul Rahman Abdullah) & Ors (No 2) [2000] 3 CLJ 532 HC ***(refd)***

Ex p Guan Teik Sdn Bhd (Substituting Lim Oo Guan, Deceased) [2010] 4 CLJ 289 FC ***(refd)***

Foo Loke Ying & Anor. v. Television Broadcasts Ltd & Ors [1985] 1 CLJ 511; [1985] CLJ (Rep) 122 SC ***(refd)***

Gan Joon Zin v. Fong Kui Lun & Ors [2004] 4 CLJ 729 FC ***(refd)***

H Rubber Estates Bhd v. Director-General Of Inland Revenue [1986] 1 BLJ 36 FC ***(refd)***

Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor [2016] 4 CLJ 641 FC ***(refd)***

Mahari Endut v. Dato' Hj Mat Razali Kassim, Pegawai Pengurus Pilihan Raya Bagi Kawasan Dewan Undangan Negeri N15 Ladang & Ors [2009] 4 CLJ 488 FC ***(refd)***

Mohd Nazri Hj Din v. Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors [2009] 3 CLJ 221 FC ***(refd)***

A *Sova Sdn Bhd v. Kasih Sayang Realty Sdn Bhd [1987] 1 LNS 55 HC* ***(refd)***
Tengku Korish v. Mohamed Jusoh & Anor And Other Cases [1969] 1 LNS 189 HC ***(refd)***
Wan Sagar Wan Embong v. Harun Taib (No. 2) [2009] 1 CLJ 457 FC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 3, 23, 24
B Election Offences Act 1954, ss. 4(a), (e), (g), 32(a), (b), (c), (d), (e), Second Schedule rr. 4(1)(b), (4), 9, 10, 15(1), 34
Elections (Conduct of Elections) Regulations 1981, regs. 24(1)(b), 25(3), (12)(b)(ii)
Federal Constitution, arts. 118, 121(1)

For the appellant - Gopal Sri Ram, Muniandy Vestanathan, Shareen Thrivina Kamarul, How Li Nee & Fiona Aurelia Culas; M/s Andy & Co
C *For the 1st respondent - Hafarizam Mohd Harun, Rosfinah Rahmat, Mohd Adli Ithin, Wan Hamidah Wan Ismail, Amin Othman; M/s Rosfinah & Co*
For the 2nd and 3rd respondents - Firoz Hussein & Choo Shi Jin; M/s Zaid Ibrahim & Co

D *[Editor's note: Appeal from High Court, Kuala Lumpur; Election Petition No: WA-26PP-2-06-2018 (overruled in part).]*

Reported by Suhainah Wahiduddin

JUDGMENT

E **Tengku Maimun Tuan Mat FCJ:**

Introduction

[1] There were two appeals before us. The first appeal, Appeal No. 35 was filed by the petitioner against the decision of the election judge in
F dismissing his preliminary objection. The second appeal, Appeal No. 40 was filed by the petitioner against the decision of the election judge in upholding the first respondent's preliminary objections.

[2] We heard both the appeals together. Having considered the appeal records and the written and oral submissions of the parties, we had
G unanimously dismissed appeal No. 35 and allowed Appeal No. 40. We now provide our reasons.

[3] In this judgment, parties will be referred to as they were in the High Court.

H **Background Facts**

[4] The petitioner was a Parti Keadilan Rakyat candidate for the Parliamentary seat in P.139 Jasin, Malacca. He filed an election petition in the High Court at Kuala Lumpur challenging the result of the 14th General Election for the said seat. The first respondent was a Barisan Nasional
I candidate, the pronounced winner of the seat. The second respondent was the returning officer while the third respondent is the Election Commission.

Proceedings In The High Court

[5] Both the petitioner and the respondents raised preliminary objections in the High Court. The petitioner's preliminary objection was premised on rr. 9 and 34 of the Election Petition Rules ("the EPR 1954") under Second Schedule of Election Offences Act 1954 which provide:

> Appointment of advocate by petitioner
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> 9. With the petition the petitioner or petitioners shall leave at the office of the Registrar a writing, signed by him or them, giving the name of an advocate whom he or they authorise to act as his or their advocate or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address within Malaysia at which notices may be left. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force.
>
> Notice of appointment of advocate
>
> 34. An advocate shall, immediately upon his appointment as such, leave written notice thereof at the office of the Registrar.

[6] It was contended by the petitioner that the respondents failed to comply with rr. 9 and 34 in that the notice of appointment of the advocates for the respondents was not stamped and that the filing of the notice of appointment of the first respondent's advocates was made through a law firm and not the advocates concerned. Accordingly, it was argued by the petitioner that the appointment of the respondents' advocates was invalid and the said advocates had no *locus* to represent the respondents.

[7] The respondents' objections on the other hand, were premised on the following grounds:

(i) that there was non-compliance of art. 118 of the Federal Constitution by the petitioner where the petitioner had wrongly filed the election petition in the High Court at Kuala Lumpur when it ought to have been filed in the High Court at Malacca;

(ii) that service of the election petition was in breach of r. 15 of the EPR 1954;

(iii) that there was non-compliance by the petitioner of rr. 4(1)(b) and 4(4) of the EPR 1954; and

(iv) that the filing of the election petition was an afterthought.

[8] At the outset, the second and third respondents withdrew their preliminary objections and their written submissions in respect of the preliminary objections.

[9] On the petitioner's preliminary objection, the election judge held that r. 9 of the EPR 1954 is only applicable to the petitioner and not the respondent. This is what the learned election judge said:

> [11] Dengan mengaplikasikan tafsiran secara mudah ke atas peruntukan Kaedah 9 KKPPR 1954, nyatalah bahawa ianya adalah peruntukan yang hanya ditujukan kepada pempetisyen sahaja. Tatacara yang perlu diikuti di bawah kaedah tersebut secara jelas merujuk kepada petisyen dan pempetisyen. Tidak ada tafsiran lain yang boleh dibuat selain daripada mendapati kehendak Kaedah 9 hanya terpakai kepada pempetisyen sahaja dan bukannya kepada responden.
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> [12] Tambahan pula, nota birai Kaedah 9 juga secara jelas merujuk kepada pelantikan peguam bela oleh pempetisyen. Walau pun nota birai bukanlah sebahagian daripada peruntukan sesuatu seksyen, ianya masih merupakan sebahagian daripada undang-undang dan juga berguna bagi maksud mencari makna sebenar sesuatu seksyen itu.

[10] The learned election judge cited *Bushell v. Hammond And Others* [1904] 2 KB 563 where Collins MR took the approach that the marginal note, while forming no part of the section, was of some assistance in interpreting a statute. *Bushell*, was applied by the Federal Court in *Foo Loke Ying & Anor. v. Television Broadcasts Ltd & Ors* [1985] 1 CLJ 511; [1985] CLJ (Rep) 122; [1985] 2 MLJ 35.

[11] Relying on the above authorities, the learned election judge concluded:

> [13] Berpandukan prinsip tafsiran undang-undang yang telah diputuskan tersebut, jelaslah nota birai kepada Kaedah 9 merujuk hanya kepada pempetisyen sahaja. Tidak ada ruang untuk membuat tafsiran sebaliknya. Ini bermakna, segala kehendak ketat tentang cara pelantikan dan tindakan yang perlu diambil peguam bela yang dilantik seperti mana dinyatakan di dalam Kaedah 9 hanya terpakai kepada pihak pempetisyen sahaja.
>
> [14] Selaras dengan dapatan tersebut dan memandangkan tidak adanya peruntukan lain yang menggariskan tatacara pelantikan peguam bela oleh pihak responden, maka sudah tentulah notis pelantikan peguam bela yang dinyatakan di bawah Kaedah 34 KKPPR 1954 seharusnya juga diputuskan hanya merujuk kepada pelantikan peguam bela oleh pempetisyen sahaja. Di bawah Kaedah 34, peguam bela yang dilantik oleh pempetisyen sahajalah yang perlu dengan segera memberikan notis secara bertulis mengenai pelantikannya kepada pejabat Pendaftar Mahkamah.

[12] The learned election judge then proceeded to state as follows:

> [16] ... sekiranya didapati Kaedah 34 terpakai kepada responden sekali pun, semakan ke atas rekod mahkamah jelas menunjukkan bahawa peguam-peguam bela yang dilantik responden pertama telah pun memfailkan notis pelantikan mereka di pejabat pendaftaran Mahkamah Tinggi Kuala Lumpur sebaik sahaja dilantik ....

> [17] Rekod juga menunjukkan bahawa semua pelantikan peguam bela responden pertama dibuat di atas nama peguam masing-masingnya dan notis-notis pelantikan telah ditandatangani oleh peguam-peguam bela yang dilantik secara individu. Hanya bagi memudahkan urusan penyampaian sahaja semua notis berhubung pelantikan peguam-peguam bela responden difailkan oleh firma Tetuan Rosfinah & Co. Dengan itu adalah didapati bahawa tidak wujud sebarang ketidakpatuhan terhadap Kaedah 34 KKPPR 1954 yang dilakukan pihak responden.

[13] The petitioner's preliminary objection was consequently dismissed by the learned election judge.

[14] As for the first respondent's preliminary objection, His Lordship found favour with the jurisdictional issue. The election judge held that pursuant to art. 118 of the Federal Constitution, the petitioner must not only comply with the mode of challenging the election, ie, by election petition, but must also comply with the provision regarding the place of filing the election petition itself. Since the challenge was in respect of the seat in Jasin, Malacca, the learned judge held that the petition must be filed in the High Court at Malacca.

[15] The election judge also upheld the first respondent's preliminary objection on the pleading point ie, on the form and contents of the petition filed by the petitioner. His Lordship stated *inter alia* that the petitioner had only provided facts of the non-compliance of the Elections (Conduct of Elections) Regulations 1981 ("the ECOER 1981") with regards to Form 14 and that it has no connection to any of the respondents especially the first and second respondents. Further, the election petition ought to specifically state the alleged non-compliance against the first and the second respondents to enable them to know what has been alleged against them and to enable them to prepare their defence to the specific allegations of non-compliance with the Election Offences Act 1954 ("the EOA 1954"). It was thus held that the petition was not in compliance with r. 4(1)(b) of the EPR 1954 which provides that an election petition shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

[16] Having agreed with the first respondent on the jurisdiction and pleading points, the learned election judge dismissed the election petition.

The Instant Appeal

[17] Before us, the petitioner canvassed three grounds of appeal:

(i) that the election judge misinterpreted art. 118 of the Federal Constitution;

(ii) that the election judge erred in dismissing the preliminary objection of the petitioner in respect of the confirmation of appointment of the respondents' advocates; and

(iii) the election judge erred in holding that the election petition lacked particularisation.

[18] On the first ground which relates to the jurisdictional issue, learned counsel for the petitioner submitted that art. 118 refers to the territorial jurisdiction and that there may be many branches of the High Court but there is only one High Court in Malaya. It was argued for the petitioner that the election judge erred in failing to look at the Federal Constitution as a whole including art. 121 and in taking a narrow and pedantic construction of the Constitution.

[19] On the second ground, it was essentially the contention of the petitioner that r. 9 and r. 34 apply to both the petitioner and the respondents. In this regard, it was argued for the petitioner that the learned election judge was wrong to dismiss the petitioner's preliminary objection against the first respondent's right to appear and to oppose the petition due to the procedural non-compliance by the first respondent with the EPR 1954. In support of his proposition, learned counsel for the petitioner cited the case of *Dayrell Walter Entrie v. Datuk Patinggi Tan Sri Alfred Jabu Numpang* [2007] 7 CLJ 11; [2007] 1 MLJ 651.

[20] As regards the third ground, learned counsel for the petitioner highlighted that the learned election judge was looking for particulars under s. 32(c) of the EOA 1954, whereas the petitioner's case is not one under s. 32(c) but under s. 32(b) of the EOA 1954, ie, for non-compliance with the election laws, and that the petitioner had listed the laws. It was submitted for the petitioner that for purposes of s. 32(b) of the EOA, the particulars pleaded by the petitioner were sufficient.

[21] In response to the petitioner's submission on the jurisdictional issue, it was argued for the first respondent that 'the High Court having jurisdiction where election was held' must be Malacca. As for r. 9, the respondents reiterated their position in the High Court that it is only meant for the petitioner and not the respondents. In this regard, reliance was placed on the case of *Ex p Guan Teik Sdn Bhd (Substituting Lim Oo Guan, Deceased)* [2010] 4 CLJ 289; [2010] 1 MLJ 1 on the rules of statutory interpretation.

Our Decision

Article 118 Of The Federal Constitution

[22] On the first ground, the petitioner submitted that the filing of the election petition at the High Court in Malaya at Kuala Lumpur was proper and in conformity with art. 118 of the Federal Constitution upon proper construction of the meaning of 'High Court' as provided under art. 121 of the Federal Constitution.

[23] The first respondent on the other hand argued that because the challenge by the petitioner relates to the seat in Jasin, Malacca, the petitioner ought to have filed the election petition in the High Court at Malacca. By filing the election petition in the High Court at Kuala Lumpur, the first respondent contended that the petitioner had contravened art. 118 of the Federal Constitution, and that the High Court at Kuala Lumpur had no jurisdiction to hear the election petition. The first respondent further contended that art. 118 should be contrasted with art. 121 of the Federal Constitution or ss. 23 or 24 of the Courts of Judicature Act 1964 which provide for the general jurisdiction and power of the High Court.

[24] Article 118 and art. 121 respectively provide:

> 118. Method of challenging election.
>
> No election to the House of Representatives or to the Legislative Assembly of a State shall be called in question except by an election petition presented to the High Court having jurisdiction where the election was held.
>
> 121. Judicial power of the Federation.
>
> (1) There shall be two High Courts of co-ordinate jurisdiction and status, namely:
>
> (a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and
>
> (b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine.

[25] The determination of the jurisdictional issue rests on the interpretation of the words 'the High Court having jurisdiction where the election was held'. The first respondent contended that the words 'the High Court having jurisdiction where the election was held' is the High Court at Malacca, whereas the petitioner took the position that the High Court having jurisdiction is simply the High Court in Malaya, which means the High Court at Kuala Lumpur had the jurisdiction to hear the election petition.

[26] In our view, the word 'High Court' appearing in art. 118 is to be understood in the light of art. 121(1) of the Federal Constitution which establishes only two High Courts of co-ordinate jurisdiction ie, one in Malaya and the other in Sabah and Sarawak. Thus, under the Federal Constitution, there are only two High Courts.

[27] The Courts of Judicature Act 1964 however provides for 'local jurisdiction' which is defined in s. 3 as follows:

> "local jurisdiction" means:
>
> (a) in the case of the High Court in Malaya, the territory comprised in the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu and the Federal Territory of Kuala Lumpur; and
>
> (b) in the case of the High Court in Sabah and Sarawak, the territory comprised in the States of Sabah and Sarawak and the Federal Territory of Labuan.

[28] The different High Courts in Malaya and in Sabah and Sarawak are but branches of the respective High Courts. Therefore when art. 118 speaks of 'jurisdiction', we opine that it refers to the jurisdiction of the two High Courts as stipulated under art. 121 and not the local or territorial jurisdiction as defined in s. 3 of the Courts of Judicature Act 1964. The High Court in Malaya encompasses the territories of Malacca and Kuala Lumpur. We therefore agreed with the petitioner and we adopted the interpretation presented by the High Court in the case of *Sova Sdn Bhd v. Kasih Sayang Realty Sdn Bhd* [1987] 1 LNS 55; [1988] 2 MLJ 268, which has been cited with approval by a subsequent decision of this court in *Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor* [2016] 4 CLJ 641.

[29] In *Sova Sdn Bhd (supra)*, the plaintiff filed a suit in the High Court at Alor Setar against the defendant for a breach of a sale and purchase agreement. The defendant raised a preliminary objection that the High Court at Alor Setar had no jurisdiction to determine the dispute between the parties as the cause of action arose in Penang and the places of business of both the plaintiff and the defendant company are located in Kuala Lumpur. In holding that the court had jurisdiction to entertain the civil proceedings, Lim Beng Choon J said:

> From the wordings of Article 121(1) it cannot be disputed that the Constitution created only two High Courts, that is the High Court in Malaya and the High Court in Borneo. The definition of the term "High Court" in section 3 of the Courts of Judicature Act 1964 ("the 1964 Act") does no more than to reiterate the constitutional policy entrenched in Article 121(1) of the creation of only two High Courts. It is implicit that a High Court located at Penang or at Alor Setar is but a branch of the High Court in Malaya and each branch of the High Court in Malaya located in any state has concurrent jurisdiction to entertain any civil proceedings regardless of whether the cause of action arose in another state.
>
> Turning to the submission of learned counsel, the striking conflict arising from their respective submissions relates to the definition of "local jurisdiction" appearing in section 3 of the 1964 Act. The conflict is to my

mind easily resolved by the following passage in the judgment of Hashim Yeop Sani J. (as he then was) in the case of *Syarikat Nip Kui Cheong (supra)* where His Lordship said at p. 116:

> "The definition of local jurisdiction (in section 3 of the Courts of Judicature Act 1964) sets out the **territorial jurisdiction of the High Court in Malaya and the High Court in Borneo**" (emphasis added).

[30] On constitutional interpretation, suffice it if we refer to the case of *Dato' Seri Ir Hj Mohammad Nizar Jamaluddin v. Dato' Seri Dr Zambry Abdul Kadir; Attorney General (Intervener)* [2010] 2 CLJ 925; [2010] 2 MLJ 285 where Arifin Zakaria (CJ (Malaya)) (as he then was) said:

> [27] One other important guide in interpretation of Constitution is that, "The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument. An elementary rule of construction is, that if possible, effect should be given to every part and every word of a Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous. (See *Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd (Bar Council Malaysia, intervener)* [2004] 2 MLJ 257).

[31] Having considered both arts. 118 and 121 of the Federal Constitution, and having applied the constitutional construction as set out above, we found that the election petition filed in the High Court at Kuala Lumpur was proper. Since Malacca and Kuala Lumpur are two of the territories comprising the States of Malaya, the High Court at Kuala Lumpur had the jurisdiction to determine the challenge to the election held in Jasin, Malacca as both the High Court at Kuala Lumpur and the High Court at Malacca are but branches of the High Court in Malaya. To accede to the argument of the first respondent would render art. 121 superfluous.

[32] Rule 15 of the EPR 1954 fortified our view. Rule 15(1) states:

> (1) Notice of the presentation of a petition, accompanied by a copy of the petition, shall, within fifteen days of the presentation of the petition, be served by the petitioner:
>
> (a) on the respondent personally which shall be effected by delivering the notice and a copy of the petition to the respondent;
>
> (b) by sending the notice and a copy of the petition by pre-paid registered post addressed to the respondent at his usual or last known place of residence or business, or
>
> (c) by posting a notice on **the notice board of the High Court in the State** in which that constituency or electoral ward is situated ...
>
> (emphasis added)

[33] If the law mandates that the petition should only be filed in the High Court in which that constituency or electoral ward is situated, then the words 'the notice board in the High Court in the State in which that constituency ... is situated' are legislated in vain and would be rendered redundant, because the petition having been filed in the High Court in the particular State where the constituency is situated, the need to reiterate the requirement for posting to be done in the High Court in that particular State does not arise. It is only when a petition is filed in another State or another branch of the High Court that the need to post the notice of the presentation and the copy of the petition on the notice board of the High Court in the State where the constituency is situated, becomes relevant or necessary.

Rules 9 And 34 Of The EPR 1954

[34] On the second ground of appeal, the petitioner submitted that the notice of appointment of the respondents' advocates was not in compliance with rr. 9 and 34 of the EPR 1954. Hence, it was argued that the appointment of advocates for the respondents was invalid. Accordingly, the said advocates had no *locus ab initio* to represent the respondents and as such, the learned election judge erred in dismissing the petitioner's preliminary objection.

[35] The petitioner contended that r. 9 should be applicable to the respondents by virtue of the applicable practice as well as the absence of any such rules governing the appointment of the respondent(s)' advocate(s). This is in addition to the respondents' choice of voluntarily subjecting themselves to the application of r. 9 by filing the notice of appointment as such. (In respect of the second and third respondents, we noted that they have filed the notice of appointment of their advocates under r. 34 of the EPR 1954, and not r. 9).

[36] As regards the first respondent, the petitioner submitted that while the appointment of an advocate was stated to be made pursuant to r. 9 of the EPR 1954, such appointment was defective and invalid for two main reasons. Firstly, the confirmation of appointment was not stamped as required under r. 9 and secondly, the confirmation of appointment was filed through the law firm's name instead of the individual advocates.

[37] For the respondents, it was submitted that r. 9 of the EPR 1954 is applicable to the petitioner only and not to the respondents. The first respondent in particular, emphasised that the notice of appointment of the advocates was filed under r. 34 of the EPR, naming each advocate representing the respondent in compliance with r. 34. The filing through a law firm was for the purpose of informing the address for correspondences and services of notices.

[38] It is trite that in interpreting the provisions of a statute, one of the cardinal rules is to adhere as closely as possible to the literal meaning of the words. The duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it. Where the language

used is clear and unambiguous, it is not the function of the court to re-write the statute in a way which it considers reasonable. In *Chin Choy & Ors v. Collector of Stamp Duties* [1978] 1 LNS 26; [1979] 1 MLJ 69 at p. 70, this court said:

> It may be apposite at this stage to recall certain basic principles in the interpretation of statutes. Applying the words and phrases of a statute in their ordinary meaning has been said to be the first and most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rules of grammar.

[39] This is particularly true in this case where r. 10 has been deleted *in toto*. The said deleted r. 10 was concerned with the appointment of advocates for a respondent. Originally, r. 10 provides that 'any person returned may at any time, after he is returned, send or leave at the office of the Registrar a writing, signed by him, appointing an advocate to act for him in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within Malaysia at which notices addressed to him may be left. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force.' The original r. 10 governing the appointment of advocate for respondent(s) has been deleted through the Election Offences (Amendment) Act 2002 [Act A1177].

[40] If the Legislature had so intended that r. 9 be applicable in similar terms to those other than a petitioner, one would expect such requirement to be clearly spelt out in an express and clear provision to that effect. Such an important requirement cannot, in our view, be inferred from the words employed in r. 9 which clearly by its language applies only to petitioner(s). Hence, we were not at liberty to ignore the explicit provisions of r. 9 of the EPR 1954 mandating the stated requirements on petitioner(s) and not respondent(s). (In respect of the literal interpretation of statutes, see also: *H Rubber Estates Bhd v. Director-General Of Inland Revenue* [1986] 1 BLJ 36; [1979] 1 MLJ 115 (FC); *Affin Credit (M) Sdn Bhd v. Yap Yuen Fui* [1984] 1 CLJ 149; [1984] 1 CLJ (Rep) 62; [1984] 1 MLJ 169 (FC); *Foo Loke Ying & Anor. v. Television Broadcasts Ltd & Ors* [1985] 1 CLJ 511; [1985] CLJ (Rep) 122; [1985] 2 MLJ 35 (SC)).

[41] With respect, the decision in *Dayrell's* case (*supra*) is of no assistance to the petitioner. That decision was not concerned with whether r. 9 is applicable to the respondent but whether by naming a firm of advocates instead of the individual name of advocates and by not immediately leaving a written notice of the appointment of advocates at the office of the Registrar, the petitioner had failed to comply with r. 9 read with r. 34 of the EPR 1954.

[42] Coming back to the instant appeal, with the deletion of r. 10 and there being no other provisions governing the appointment of advocate(s) for the respondent, and applying the same principles relating to literal interpretation of statutes, we held that it is r. 34 of the EPR 1954, and not r. 9 which is applicable to the respondents. Hence, in so far as the respondents are concerned, r. 34 of the EPR 1954 is sufficient to govern the appointment of any advocate acting or representing the respondents whereupon, such advocate shall, immediately upon his appointment as such, leave written notice thereof at the office of the Registrar.

[43] We were satisfied that the respondents' advocates had complied with the requirement of r. 34 of the EPR 1954 as they had filed written notices of their appointment at the Registrar's office of the High Court at Kuala Lumpur. The learned election judge did not therefore err in dismissing the petitioner's preliminary objection in relation to the appointment of the respondents' advocates.

Rules 4(1)(b) And 4(4) Of The EPR 1954

[44] On the issue of non-compliance with r. 4(1)(b) and 4(4) of the EPR 1954, learned counsel for the first respondent contended that the petitioner had failed to show in the election petition that any of the respondents had committed acts of non-compliance, either by:

(i) committing specific election offences under s. 4(a), (e), or (g) of EOA 1954 to be read together with s. 32(b) of EOA 1954; or

(ii) any written law relating to conduct of election which affects the result of the general election for the constituency of Parliament P. 139 Jasin.

As a result, it was contended that the election petition ought to be dismissed.

[45] It is trite that the statutory requirements of election laws are mandatory and must be strictly observed, failing which the petition may be rendered defective and may be dismissed without going for trial. (See *Mahari Endut v. Dato' Hj Mat Razali Kassim, Pegawai Pengurus Pilihan Raya Bagi Kawasan Dewan Undangan Negeri N15 Ladang & Ors* [2009] 4 CLJ 488; [2009] 5 MLJ 153; *Tengku Korish v. Mohamed Jusoh & Anor And Other Cases* [1969] 1 LNS 189; [1970] 1 MLJ 6; and *Chong Thain Vun v. Watson & Anor And Other Cases* [1967] 1 LNS 29; [1968] 1 MLJ 65). The *raison d'être* for this was explained in *Dr Lee Chong Meng v. Returning Officer (Abdul Rahman Abdullah) & Ors (No 2)* [2000] 3 CLJ 532; [2000] 6 MLJ 98:

> The statutory requirements of an election must be strictly observed because an election dispute is a statutory proceeding unknown to the common law or equity.

[46] Thus, for the petitioner to succeed in his election petition, the petitioner must briefly plead the facts and grounds of any non-adherence or offences alleged to have been committed. The statutory embodiment of this principle is enumerated in r. 4(1)(b) of the EPR 1954 as follows:

> Contents and form of election petition
>
> 4. (1) An election petition shall contain the following statements:
>
> ...
>
> (a) ...; and
>
> (b) it shall state the holding and result of the election, and **shall briefly state the acts and grounds** relied on to sustain the prayer.
>
> (emphasis added)

While the form of the petition is prescribed under r. 4(4) of the EPR 1954.

[47] On the word 'briefly' appearing in r. 4(1)(b) quoted above, this court in *Mohd Nazri Hj Din v. Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors* [2009] 3 CLJ 221 observed:

> The word "briefly" is the adverb of "brief" which is defined in the *Webster's New World Dictionary* as, *inter alia*, a concise statement of the main points of a law case, usually filed by counsel for the information of the court.
>
> ...
>
> A prayer can be sustained only by a statement of facts necessary to establish it. They will be the facts on which a petitioner will rely. Thus there must be sufficient facts to constitute a cause of action as they will form the basis of the prayer. It is therefore abundantly clear that the facts to be pleaded pursuant to r. 4(1)(b) ... must be such as to make out a case for the petitioner.

[48] In relation to the grounds to be relied on, s. 32(a) to (e) of the EOA 1954 stipulate the specific grounds on which an election may be declared void. The petitioner's case, as pleaded, is premised on sub-s. (b) which reads:

> Avoidance of election on election petition
>
> 32. The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:
>
> ....
>
> (b) non-compliance with the provisions of any written law relating to the conduct of any election if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election.

[49] A petition, therefore, must not only narrate the facts complained of but must also relate or associate the complaints with the provision of election laws alleged to have been transgressed (see *Wan Sagar Wan Embong v. Harun Taib (No. 2)* [2009] 1 CLJ 457; and *Gan Joon Zin v. Fong Kui Lun & Ors* [2004] 4 CLJ 729). In this regard, the twin requirements of s. 32(b) of Election Offences Act 1954 must be indicated in the election petition, namely:

(i) that the election was conducted not in accordance with the principles laid down in any written law relating to the conduct of any election; and

(ii) that such non-compliance had affected the result of the election.

[50] In his election petition, the petitioner pleaded, *inter alia*, the following:

(i) uncertified Form 14 in contravention with reg. 25(12)(b) of the Elections (Conduct of Elections) Regulations 1981 ('ECOER');

(ii) failure to count the ballot papers in accordance with reg. 25(3) of the ECOER;

(iii) failure to determine the number of ballot papers issued and the number of unused or spoilt ballot papers in accordance with reg. 24(1)(b) of ECOER; and

(iv) failure to serve a copy of Form 14 to the candidate or the candidate's agent in accordance with reg. 25(12)(b)(ii) ECOER.

[51] The petitioner had also pleaded that the above contravention or non-compliance had affected the result of the election.

[52] Having perused the petition, we were satisfied that the petition was in accordance with rr. 4(1)(b) and 4(4) of the EPR 1954 in that it had stated the holding and result of the election and had also briefly stated the facts and grounds relied on to sustain the prayer. The election petition was thus properly filed, and the learned election judge erred in holding that the election petition was not in compliance with the provisions of r. 4(1)(b) and 4(4) of the EPR 1954.

Conclusion

[53] For the foregoing reasons, we unanimously dismissed Appeal No. 35 and allowed Appeal No. 40. Consequent to us allowing Appeal No. 40, we made an order that the election petition be remitted to the High Court to be heard on its merits by a different election judge.